

PUBLIC LAW BOARD NO. 1582

PARTIES) THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
TO)
DISPUTE) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

STATEMENT OF CLAIM: Claim is in behalf of former Trackman J. D. Dominquez, Middle Division, for reinstatement to his former position with seniority, vacation and all other rights unimpaired and with pay for all wage loss commencing on July 29, 1976.

In this dispute the claimant was discharged from the service of the Carrier for his alleged violation of Rules 14 and 16, General Rules for the Guidance of Employees, Form 2626 Standard.

On July 29 the extra gang foreman directed the claimant to join him in double spiking. The claimant had received a personal injury two days earlier while double spiking and asked that he not be required to engage in double spiking.

The foreman insisted that the claimant stop the work he was doing (single spiking) and engage in double spiking with him. Claimant again advised the foreman that it was unsafe and that he did not wish to engage in double spiking because of the injury that he had received two days previously.

The foreman became more insistent and then advised the claimant that he was taking him to town because he would not participate in double spiking. Another employee offered to double spike with the foreman, but the foreman refused. The claimant was removed from service July 29 pending the investigation which was held on August 9.

The Organization contends that the exclusion rule was violated when the Carrier allowed the foreman to remain in the room after testifying and hear other testimony and then be called for re-direct examination. The Carrier points out that all of the witnesses were segregated prior to the hearing.

This does not meet the requirements of the rule. If a witness is to be recalled, he must continue to be segregated. The foreman testified that everyone on the gang was qualified to double spike, and all of the employees, including the claimant, had performed this service. Another employee also testified that double spiking was common practice on the gang he worked with.

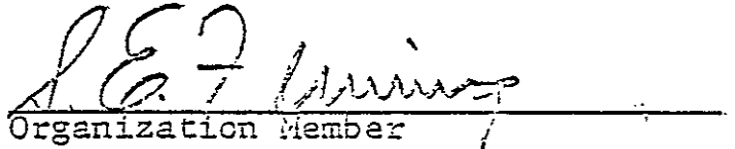
If the testimony of the foreman was necessary in this case, especially that testimony which was rendered after the abrogation of the exclusion rule, the Board might modify the discipline on that basis. However,

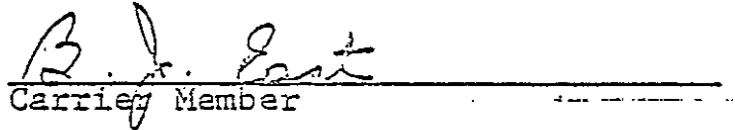
the claimant himself testified that he refused to double spike, that double spiking was unsafe and that this decision was for him to make and not for the Carrier to make. The claimant further testified he knew how to double spike and had performed this service on another railroad prior to his employment by the Santa Fe.

The evidence of record indicates that double spiking is not an unsafe practice if the employees have been properly instructed. On that basis the Board finds no support for the claim.

AWARD: Claim denied.


Preston J. Moore, Chairman


Organization Member


Carrier Member